IN THE SUPREME COURT OF

OCTOBER TERM

No. 80-57

MONTY LEE EDD

P

-vs-

STATE OF OKLA

R

ON PETITION FOR A WRIT OF
COURT OF CRIMINAL AP
STATE OF OKL

RESPONDENT'S BRIEF I

JAN E
ATTO

DAVID
ASSIS
CHIEF

112 S
Oklah
(405)

COUNS

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JURISDICTION . . . . . .

CONSTITUTIONAL AND STATUTORY PRO

QUESTIONS PRESENTED FOR REVIEW

STATEMENT OF THE CASE . . . . .

REASONS WHY THE WRIT SHOULD BE D

1. The Eighth Amendment D
matically Immunize fro
Penalty Every Person w
Years Old at the Time
and Under Oklahoma's S
for the Imposition of
alty, A Rational Fact
erly Find that the Dea
Justified Under the Fa
this Individual Crime
Surrounding the Petiti
Present Case. . . . .

2. The Aggravating Circum
Murder was "Especially
or Crule" is not Uncon
and Overbroad and its
Present Case Does Not
less Sentencing in Vio
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3. The United States Cons
Require a State to Pro
gator and a Psychiatri
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10 O.S. Supp. 1976, § 1112

19 O.S. 1971, § 138.1 . . . .

19 O.S. Supp. 1974, § 138.6

20 O.S. Supp. 1975, § 1304

21 O.S. Supp. 1976, § 701.7

21 O.S. Supp. 1976, § 701.9

21 O.S. Supp. 1976, § 701.10

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21 O.S. Supp. 1976, § 701.13

22 O.S. 1971, §§ 1171-1172

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IN THE S

ON PETITI
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RESP

The respondent
State of Oklahoma, r
petition for writ of
the Oklahoma Court o
and to which reheari

The opinion of
reported at 616 P.2d

The judgment of
entered on March 21,
on September 15, 198
28 U.S.C. § 1257(3).

CONSTITUTIONA

The Eighth Amen
as follows:

> "Excessive
> excessive
> usual puni

The Fourteenth
provides in part:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 10 O.S. Supp. 1976, § 1112, which was in effect at the time of the petitioner's crime, states in part as follows:

"(b) If a child is charged with delinquency as a result of an offense which would be a felony if committed by an adult, the court shall consider the following guidelines:

"1. The seriousness of the alleged offense to the community;

"2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

"3. Whether the offense was against persons or property, greater weight being given to offenses against persons especially if personal injury resulted;

"4. Whether there is prosecutive merit to the complaint;

"5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults;

"6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;

"7. The record and previous history of the juvenile, including previous contacts with community agencies, law enforcement agencies, schools, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions; and

"8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if he is found to be guilty of the alleged offense, by the use of procedures and facilities currently available to the juvenile court;

"and after full investigation and a preliminary hearing, may in its discretion continue the juvenile proceeding, or it may certify such child capable of knowing right from wrong, and to be held accountable for his acts, for proper criminal proceedings to any other division of the court which would have trial jurisdiction of such offense if committed by an adult.

"(c) Prior to the entry of an order of adjudication, any child in custody shall have

the same right to be released upon bail as would an adult under the same circumstances.

"(d) A juvenile sixteen (16) years of age or older may be charged and prosecuted in any municipal court for violating a city ordinance if the offense does not constitute a crime under state law, and, further provided, that the maximum penalty which may be imposed shall not be in excess of Twenty Dollars ($20.00), and further provided, that the present laws relative to incarceration of juveniles shall be in no way imparied or altered by this act, nor shall this act alter present laws relative to prosecution of juveniles for traffic violations."

Title 21 O.S. Supp. 1976, § 701.7 provides in part:

"A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof."

. . .

Title 21 O.S. Supp. 1976, § 701.9 stated in part:

"A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be punished by death or by imprisonment for life."

Title 21 O.S. Supp. 1976, § 701.10 provides as follows:

"Upon conviction or adjudication of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding shall be conducted by the trial judge before the trial jury as soon practicable without presentence investigation. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted before the court. In the sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in this act. Only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. However, this section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death."

Title 21 O.S. Supp. 1976 § 701.11 provides as follows:

"In the sentencing proceeding, the statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in the charge and in writing to the

jury for its deliberation. The jury, if its verdict be a unanimous recommendation of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstance or circumstances which it unanimously found beyond a reasonable doubt. In non-jury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in this act is so found or if it is found that any such aggravating circumstance is outweighed by the finding of one or more mitigating circumstances, the death penalty shall not be imposed. If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life."

Title 21 O.S. Supp. 1976, § 701.12 provides as follows:

"Aggravating circumstances shall be:

"1. The defendant was previously convicted of a felony involving the use or threat of violence to the person;

"2. The defendant knowingly created a great risk of death to more than one person;

"3. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;

"4. The murder was especially heinous, atrocious, or cruel;

"5. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;

"6. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony; or

"7. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society."

Title 21 O.S. Supp. 1976, § 701.13 provides as follows:

"A. Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Oklahoma Court of Criminal Appeals. The clerk of the trial court, within ten (10) days after receiving the transcript, shall transmit the entire record and transcript to the Oklahoma Court of Criminal Appeals together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Oklahoma Court of Criminal Appeals.

"B. The Oklahoma Court of Criminal Appeals shall consider the punishment as well as any errors enumerated by way of appeal.

"C. With regard to the sentence, the court shall determine:

"1. Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

"2. Whether the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in this act; and

"3. Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

"D. Both the defendant and the state shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court.

"E. The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

"1. Affirm the sentence of death; or

"2. Set the sentence aside and remand the case for modification of the sentence to imprisonment for life.

"F. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the validity of the sentence."

QUESTIONS PRESENTED FOR REVIEW

1. Does the Eighth Amendment to the United States C tion automatically immunize from punishment by the death every person who is sixteen years old at the time of the regardless of the facts of the case and the character and of the defendant?

2. Is one of the aggravating circumstances which th court found existed in the petitioner's case, that the mu especially heinous, atrocious, or cruel, so vague and ove as to be violative of the defendant's Eighth and Fourteen ment rights, and was the application of that aggravating stance under the facts of the present case improper under Godfrey v. Georgia, guidelines?

3. Does the United States Constitution require a
provide an investigator and a privately retained psychi
indigent defendants in all capital cases, and is the Eq
tection Clause of the Constitution violated if a state
allow public defender offices in metropolitan areas to
investigators while not establishing the statutory mear
providing court-appointed attorneys with investigators
areas?

STATEMENT OF THE CASE

Monty Lee Eddings (hereinafter referred to as peti
was charged by Information in the District Court of Cre
State of Oklahoma, with the crime of Murder in the Firs
in violation of 21 O.S. § 701.7A. Under this Section a
commits murder in the first degree when he unlawfully a
malice aforethought causes the death of another human b

Because the petitioner was sixteen years old at th
crime was committed, under the laws of the State of Okl
certification hearing was required before petitioner co
tried as an adult. Title 10 O.S. Supp. 1976, § 1112 wa
able certification statute in effect at that time. The
was certified to stand trial as an adult and this findi
affirmed by the Oklahoma Court of Criminal Appeals pri
on the merits in Matter of M. E., 584 P.2d 1340 (Okl. C
cert. denied, 436 U.S. 921. Subsequent to that the pe
entered a plea of nolo contendere to the charge of Mur
First Degree, and the court entered a finding of guilt
conducted a sentencing hearing on the question of whet
petitioner should receive the death penalty or life im

The evidence which the State introduced during th
hearing revealed that on April 4, 1977, the petitioner
from Missouri, was driving a vehicle on an interstate
Oklahoma with his sister and two friends. The petitio
his possession a sawed-off shotgun and two other firea
the petitioner had made a stop on the interstate at a
station, he lost control of his car briefly when he dr
cigarette and the vehicle went into a ditch and came b

highway. A man who saw the incident advised the de
way patrol trooper by the name of Larry Crabtree, a
happened. The officer pursued the car to check on

As the occupants of the car in which the petit
driving were moving along, one of the passengers ne
Crabtree was behind them. The petitioner stated, "
cop harasses me I'll shoot him." At that time Troo
turned on his red light and the petitioner pulled
As Trooper Crabtree approached the vehicle in whic
was driving, the petitioner took the sawed-off sho
floor of his car and loaded it. When the Trooper
six feet away, the petitioner stuck the sawed-off
the window and fired the weapon, immediately killi

The testimony also revealed that as the petit
from the scene of the murder he stated that he wou
killed a cop than go back to where he lived. The
duced evidence that the petitioner advised two oth
he had been taken to the jail that, "If I got loos
you all too." At another time the petitioner told
after twice having asked to have a light turned of
shot one of you people, and I'll get you too if yo
this light off."

The petitioner himself produced four witnesse
officer from Missouri who testified extensively co
tioner's background and juvenile record; the Chief
chologist from the Oklahoma state mental hospital
petitioner pursuant to a court order in the preser
fessor from a university who had a Ph.D. in sociol
viewed petitioner while he was in jail; and a psyc
private practice who interviewed petitioner and te
cerning his maturity and emotional development. I
mony of the juvenile officer it was revealed that
been adjudicated as a delinquent for the offenses
stealing, tampering with a motor vehicle, vandali
assault with intent to do great bodily harm.

After the hearing before the court on the a
mitigating circumstances, the court made the spe
that three aggravating circumstances existed. T
vating circumstances which the court found were

1. That the murder was especially h
atrocious, or cruel;

2. That the murder was committed
purpose of avoiding or preventing
ful arrest or prosecution; and

3. That the petitioner would const
continuing threat to society.

The trial court found that all three aggravating
existed beyond a reasonable doubt and found that
outweighed by the only mitigating circumstance w
found existed on behalf of the petitioner, the j
petitioner (Tr. 286-292). The court then senter
to death.

After the petitioner had been convicted and
by the trial court, he appealed his conviction t
Court of Criminal Appeals which affirmed the pet
tion. The Court of Criminal Appeals considered
imposed in this case in accordance with 21 O.S.
and found:

1. That the sentence of death was
posed under the influence of p
prejudice, or any other factor;

2. That the evidence supported the
finding of the aggravating
stances; and

3. That the sentence of death w
excessive or disproportionate
penalty imposed in similar cases.

Regarding the petitioner's contention that
Patrolman Crabtree was no more heinous, atrocio
any other murder," the Court of Criminal Appeal
definition of State v. Dixon, 283 So.2d 1 (Fla.

> "'[W]e feel that the meaning of such
> a matter of common knowledge, so that
> nary man would not have to guess at w
> intended. It is our interpretati
> heinous means extremely wicked or sh
> evil; that atrocious means outra
> wicked and vile; and, that cruel me
> signed to inflict a high degree of p
> utter indifference to, or even enjoyr
> the suffering of others. What is int

> be included are those capital
> the actual commission of the ca
> was accompanied by such additio
> to set the crime apart from the n
> tal felonies--the conscienceless
> less crime which is unnecessari
> to the victim.'" 616 P.2d at

The Court noted that the identity of t
in which the killing was performed made the
The court stated that the Trooper thought h
traffic stop and had no reason to expect an
The court found "we believe that this killi
in the performance of his duties was, in th
court 'extremely wicked' and 'shockingly ev
wicked and vile.'"

The Court concluded its discussion of
stance by stating:

> ". . . and from the testimony r
> petitioner's manner we believe
> killing was 'designed to inflic
> gree of pain with utter indiffere
> the suffering of others.' Sta
> supra." 616 P.2d at 1168.

The Court then affirmed the judgment of gui
of death.

REASONS WHY THE WRIT SHOULD B

I. THE EIGHTH AMENDMENT DOES NOT AUT
IMMUNITE FROM THE DEATH PENALTY B
WHO IS SIXTEEN YEARS OLD AT THE T
MURDER, AND UNDER OKLAHOMA'S STAT
CEDURE FOR THE IMPOSITION OF THE
ALTY, A RATIONAL FACT FINDER COUL
FIND THAT THE DEATH PENALTY WAS J
UNDER THE FACTS SURROUNDING THIS
CRIME AND THE FACTS SURROUNDING T
IN THE PRESENT CASE.

The petitioner argues, in effect, that
should adopt a constitutional principle tha
age of eighteen should be automatically imm
penalty, irrespective of the crime he commi
circumstances surrounding his individual ch

The State responds first by noting tha
allows the consideration of "any" mitigatin
Lockett v. Ohio, 438 U.S. 586; Roberts v. I
Woodson v. North Carolina, 428 U.S. 280. T

present case itself found petitioner's a
cumstance but that it was outweighed by
circumstances found by the trial court b
(Tr. 286-292).

Age itself is not regarded as a "su
United States Constitution. Massachuset
Murgia, 427 U.S. 307; Vance v. Bradley,
the Supreme Court has been reluctant to
upon a state's criminal justice system.
514, 522-525.

In Ingram v. Wright, 430 U.S. 657,
the Cruel and Unusual Punishment Clause
which can be inflicted by the state in t

> "First, it limits the punishme
> imposed on those convicted o
> second, it proscribes punishme
> proportionate to the severity
> . . and third, it imposes sub
> on what can be made criminal
> such." 430 U.S. at 667.

Nowhere in those standards is there a pr
ment of non-suspect classes of persons.
U.S. 238, 240 (J. Douglas concurring).
Wainwright, 578 F.2d 582, 616 (5th Cir.
U.S. 976, reh. den., 441 U.S. 937. Nor
that the imposition of the death sentenc
grossly disproportionate to the severity
comparing the facts in the present case
Florida, 428 U.S. 242 and Gregg v. Georg
Estelle, ____ U.S. ____, 63 L.Ed.2d 382,
Coker v. Georgia, 433 U.S. 584. Further
stated in Gregg:

> ". . . we are concerned here
> imposition of capital punis
> crime of murder, and when a
> taken deliberately by the offe
> say that the punishment is in
> portionate to the crime." 4

The State contends that the better
defendant, as the State allowed petition
case, to present his or her age as a mit
Lockett v. Ohio, supra, this Court found

because it failed to allow the sen

the following as mitigating factor

> ". . . her character, pr
> of specific intent to
> relatively minor part
> U.S. at 597. (Emphasis

The sentencing judge in the p

tioner to introduce such mitigatin

did not outweigh the aggravating c

existed beyond a reasonable doubt.

that the imposition of the death p

in accord with statutory procedure

supra, and Gregg v. Georgia, supra

scheme for the imposition of the d

authority is required to "focus on

of the crime and in the defendant.

is an appellate review of each dea

Georgia, Gregg, 428 U.S. at 240-20

U.S. at 253. Therefore, certiorar

this contention of the petitioner.

II. THE AGGRAVATING CIRCUMST
WAS "ESPECIALLY HEINOUS,
IS NOT UNCONSTITUTIONALL
BROAD AND ITS APPLICATIO
DOES NOT CONSTITUTE STAN
IN VIOLATION OF THE DICT
GEORGIA.

One of the aggravating circum

trial court was that the murder wa

or cruel." 21 O.S. Supp. 1976, §

language contained in the Florida

Stat. Ann. § 921.141(5)(h). In Pr

Supreme Court upheld the death con

found that the murder there was "e

cruel." 428 U.S. at 920. The Sup

Supreme Court had adopted the cons

forth in State v. Dixon, 283 So.2d

that:

> "We cannot say that the
> strued, provides inadequ
> charged with the duty o
> posing sentences in capi
> at 255, 256.

In the present case the tria
of Criminal Appeals adopted the D
287), 616 P.2d at 1167, 1168. Th
Appeals has also affirmed other d
Dixon case was used as a basis fo
defining "heinous, atrocious or c
P.2d 269, 280 (Okl. Cr. 1980); In
598-599 (Okl. Cr. 1980).

The facts in the present cas
at least as callous as the one in
The petitioner in Proffitt stabbe
chest during a nighttime resident
the present case calculatedly mur
who thought he was making a routi
in Proffitt, the Supreme Court re
313 So.2d 666 (Fla. 1975) where t
traveling companion. 428 U.S. at
case reveals that one of the aggr
the jury was that the murder was
or cruel." 313 So.2d at 671. Se
supra, 578 F.2d at 610-612.

The petitioner cites the cas
U.S. ____, 64 L.Ed.2d 398, 100 S.
sent case is analogous in law and
circumstance which the Supreme Co
construed and applied to that fac
offense of murder, . . . was outr
rible or inhuman in that it invol
or an aggravated battery to the v
2534.1(b)(7). Godfrey v. Georgia
the statute is different on its f
statute requiring that the murder
or cruel."

The Supreme Court in Godfrey
reme Court did not apply a const
"outrageously or wantonly vile,

involved . . . depravity of
Court noted that the facts
were members of the defenda
emotional trauma. The victi
shortly after the killings,
sibility and the "heinous"
409. The Supreme Court sta
is no principled way to dis
penalty was imposed, from t
64 L.Ed.2d at 409.

In the present case, w
taneously, several major fa
one in Godfrey. First, as
aggravating circumstance is
the Godfrey killings "heino
statute refers to crimes th
or cruel."

Secondly, the victims
causing the defendant extre
case the victim was a highw
what he thought to be a rou
of Criminal Appeals stated

> ". . . Patrolman
> for danger. Ind
> expect it. We be
> peace officer i
> duties was, in
> Court, 'extremel
> evil; and outrag
> 616 P.2d at 1168.

In Roberts v. Louisian

> "To be sure, the
> was a peace offi
> duties may be reg
> cumstance. There
> affording protecti
> who regularly mu
> to guard the sa
> property." 431 U.

Thirdly, in Godfrey, t
"heated" conversation betwe
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by Justice Stewart in Gr
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that precedes the decisi

Therefore, in view
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der such as the one in t
under Oklahoma's interpr
"especially heinous, atr
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alty may be imposed. Go
409.

III. THE UNITED STA
REQUIRE A STAT
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DANT IN CAPITA
OKLAHOMA HAS S
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IN EXCESS OF 2
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The statutes of Okl
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hundred thousand (200,00
the last Federal Census,
Tulsa Counties. In thos
are authorized to hire o
salaries are paid from t
The other counties appoi
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§ 1271 and 20 O.S. Supp.
zation for the expenditu
these counties. Bills v
Nowhere in the statutes
is there authorization f
private psychiatric exam

se, the peti-
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1974, § 138.6.
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r. 1978).
f Oklahoma
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y criminal

case. Bills v. Stat
616 P.2d at 1164. T
tion of a defendant
in the present case
These statutes have
Supp. 1980, § 1175.1
ordered mental exami

In its Opinion
tioner's contention,
determination that i
an economical divisi
gator in each county
gator each attorney
616 P.2d at 1164. R
should be provided a
that petitioner pres
the state psychologi
a psychiatrist in pr
from a university (T
ness, the petitioner
tioner's home and fa

With regard to
mandates the State t
expense, it should b
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fore, the facts invo
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was prejudiced at th
fact that four witn
stage and provided t
the petitioner's ba
additional assistan

While Congress
ment of investigati
has never implied t

enact a similar statute. Furthermore, the statutory system establishing public defenders in certain populous counties, with the right of those offices to hire investigators for the efficient management of the office, should not offend the Equal Protection Clause of the Fourteenth Amendment. North v. Russell, 427 U.S. 328.

Regarding the petitioner's claim that the State should have provided funds for the hiring of a private psychiatrist, mention should again be made of the fact that petitioner produced three expert witnesses who testified concerning the petitioner's background and mental state. One of those was a state psychiatrist who testified concerning the petitioner's mental state when he was committed for observation. This contention is, therefore, without merit and certiorari should not be granted to review this contention.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL OF OKLAHOMA

David W. Lee

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(405)521-3921

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

On this 13th day of February, 1981, 3 (three) true and correct copies of the foregoing Brief in Opposition were served as prescribed by the Rules of this Court, by placing same in the U.S. Mail, postage fully prepaid, to:

Jay C. Baker
1850 South Boulder
Tulsa, Oklahoma 74119

David W. Lee

DAVID W. LEE